

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 1807 OF 2014

ORDER:

This civil revision petition, under Article 227 of the Constitution of India read with Section 83(9) of the Wakf Act, 1995, is filed by respondents 2, 3, 5 to 7 in O.S. No.1 of 2012 challenging the order dated 30.07.2012 in I.A. No.743 of 2012 in O.S. No.1 of 2012 passed by the Andhra Pradesh State Wakf Tribunal (for short 'Tribunal'), Hyderabad.

Initially, the plaintiffs, who are the respondents 1 to 3 herein, filed suit against the defendants 1 to 8, who are the petitioners and respondents 4 to 6 herein, defendant No.9, who is the respondent No.7 herein, was impleaded by order dated 08.08.2012 in I.A. No.688 of 2012 and defendant No.10, who is respondent No.7 herein, was impleaded by order dated 15.05.2013 in I.A. No.1038 of 2012, to grant perpetual injunction restraining the defendants, their men, agents, servants, attorneys, assignees and all persons claiming through them from interfering, in any manner whatsoever, with the peaceful possession and enjoyment of plaintiffs in respect of suit schedule "A to E" lands bearing Sy.No.120 to an extent of Ac.2.06 cents, Sy.No.124/A to an extent of Ac.4.30 cents and Sy.No.126/1 to an extent of Ac.0.78 cents and Sy.No.126/2 to an extent of Ac.0.47 cents and Sy.No.126/3 to an extent of Ac.0.71 cents of Fazulbaigpet Village, Mandal & District Srikakulam, Andhra Pradesh, which is more particularly described in the schedule annexed to the plaint, making certain allegations.

While the matter stood thus, the respondents 1 to 3 herein filed I.A. No.743 of 2012 under Rules 1 and 2 of Order XXXIX of the Code of Civil Procedure, 1908 (for short 'CPC') for grant of temporary injunction restraining the Sub-Registrar-1, Srikakulam, Srikakulam District, who is the proposed respondent by the date of filing the petition, from registering any document pertaining to the schedule property.

The basis for filing the petition under Rules 1 and 2 of Order XXXIX of CPC is that the respondents 1 to 3 herein filed suit for the relief stated above along with I.A.No.1 of 2012 for grant of temporary injunction and obtained *ad interim* injunction restraining the petitioners herein and other defendants before the Tribunal and the same was served on the petitioners and other defendants .

Despite granting *ad interim* injunction, the petitioners herein attempted to interfere with the peaceful possession and enjoyment of the schedule property, which is wakf property. Therefore, the respondents 1 to 3 herein filed I.A. No.84 of 2012 in I.A. No.1 of 2012 seeking specific direction from the Tribunal to provide necessary police aid for the implementation of the orders passed by the Tribunal in I.A. No.1 of 2012. By order dated 07.02.2012, the Tribunal directed the Station House Officer, II Town Police Station, Srikakulam District, for implementation of the *ad interim* injunction passed in I.A. No.1 of 2012. As the matter stood thus, Tahasildar Srikakulam Mandal, filed counter affidavit in W.P. No.2878 of 2012. On the strength of the same, the petitioners came to know that respondents 13 and 14 in the said writ petition viz., Gedula Septarajulu and Gedula Bhaskara Reddy, misrepresented the facts and obtained

pattadar pass book and title deeds for the land to an extent of Ac.2.06 cents in Sy.No.120 and they were being cancelled by exercising power under Andhra Pradesh Record of Rights in Land Act and Rules. Despite sworn statement in the averments in the counter affidavit for the action being taken, no steps were taken to cancel pattadar pass books/ title deeds issued in favour of the said Gedula Septharajulu and Gedula Bhaskara Reddy. However, a news item was published in 'Sakshi 24/7' daily newspaper, circulated in Srikakulam on 22.07.2012 at page 10 along with the photograph of the Sub-Registrar, the petitioners came to know that the Sub-Registrar has registered Ac.1.03 cents in Sy. No.120 of Fazulbaigpet Village, stealthily after 10.00 p.m. on 21.07.2012. It is also disclosed from the news item that though the suit O.S. No.1 of 2012 is pending with the Tribunal and *ad* injunction was passed, the Sub-Registrar-I, Srikakulam, registered the documents pertaining to the suit schedule property under the evil influence of political bosses including Cabinet Ministers in the Government. Therefore, the respondents 1 to 3 herein sought, temporary injunction restraining the Sub-Registrar-I, Srikakulam District, from registering sale deed alienating the land to an extent of Ac.1.03 cents in Sy.No.120, land to an extent of Ac.4.30 cents in Sy.No.124/1, Ac.0.28 cents in Sy.No.126/1, Ac.0.47 cents in Sy.No.126/2, Ac.0.71 cents in Sy.No.126/3, of Fazulbaigpet Village, Srikakulam Mandal and District, pending disposal of the above suit. The respondents 1 to 3 herein would be put to serious loss and inconvenience, in case no injunction is granted and prayed to grant temporary interim injunction.

By the date of filing I.A. No.743 of 2012, the Sub-Registrar-I, Srikakulam District, was not a party, but later filed I.A. No.731 of 2012 to implead the Sub-Registrar-I, Srikakulam District. By order dated 17.06.2013, the Sub-Registrar-I was impleaded as defendant No.11 in the suit that is subsequent to the order dated 30.07.2012 in I.A. No.743 of 2012.

The Tribunal, upon hearing argument of the counsel for the respondents 1 to 3 herein, passed an interim order in I.A. No.743 of 2012 dated 30.07.2012 restraining the proposed respondent/ Sub-Registrar-I, Srikakulam District, Andhra Pradesh, from registering any sale deed relating to the schedule property by way of restraint order.

The Sub-Registrar-I, Srikakulam, though restrained by way of an interim order, did not challenge the same before this Court. However, respondents 2, 3, 5 to 7 in the suit alone approached this court, filed the present revision challenging the order dated 30.07.2012 in I.A. No.743 of 2012 passed by the Tribunal raising the following contentions:

- a) Granting an interim injunction against the Sub-Registrar-I, Srikakulam District, from registering the documents executed in respect of the schedule property even without impleading him as a party to the proceedings is erroneous on the face of the record.**
- b) Granting relief more than the relief claimed in the suit, as on the date of passing order, is contrary to the law.**
- c) The Sub-Registrar is a Government official, thereby to proceed against him, a notice under Section 80 CPC is required and even if the notice is dispensed with by exercising power under Sub-Section 2 of Section 80 CPC,**

the court cannot pass order without issuing show cause notice, thereby granting an interim injunction against the person, who is not a party to the suit, is a grave illegality and prayed to set aside the same.

During hearing, Sri Subramanya Narsu, learned counsel for the petitioners herein, mainly pointed out the order passed by the Tribunal is erroneous for the reason that a notice under Section 80 CPC is required to be issued to entertain suit against the Government servant, though notice is dispensed with, by exercising power under Section 80(2) CPC no interim order be granted without show cause notice and he placed reliance on the judgment of the Apex Court in **State of A.P. and Others v. Pioneer Builders, A.P.¹, M.Subramaniam and Ors., v. Executive Officer, Chinnavedampatti Town Panchayat, District Collector²** in support of his contention.

It is also further contended that grant of relief against the person who is not a party to the proceedings is a grave illegality. To support his contention, he placed reliance on the judgment of the Madras High Court in **P.M. Aboobucker v. K.Kunhamoo and Others³** and that the court cannot grant higher relief than the relief claimed in the suit, based on the law declared by this Court in **Kolli Butchi Koteswara Rao v. District Level Committee and Others⁴, Sree Jain Swetambar Terapanthi VID (s) v. Phundan Singh and others⁵**. On the strength of those judgments, the counsel for the petitioners requested this court to set aside the order passed by the Tribunal.

¹ (2006) 12 SCC 119

² 2007 Law Suit (Madras) 1953

³ AIR 1958 Madras 287 (vol.45, C.89)(1)

⁴ 2004(3) ALT 822

⁵ (1999) 2 SCC 377

The counsel for the respondents 1 to 3 herein mainly contended that when the petitioners filed an application for vacating interim injunction before the Tribunal, they ought to have pursued the matter, instead of approaching this court, to set aside the order. The petitioners herein admittedly filed an application before the Tribunal to vacate the interim order in I.A. No.743 of 2012 as averred in paragraph 10 of the grounds of revision, still it is pending. In such case, this court cannot exercise its supervisory power under Article 227 of the Constitution of India and requested this court to direct the petitioners herein to pursue the remedy in the vacate petition pending before the Tribunal.

Considering the rival contentions, perusing the material available on record, the points that arise for consideration are as follows:

- 1. Whether any interim order can be granted against the party/ person who is not a party to the suit or during pendency of interlocutory application filed under Rule 10 Order I of CPC?**
- 2. Whether an interim injunction can be passed against the Government official, who is discharging duties as a Government servant without issuing any prior notice, even after dispensing with the notice exercising its power under Section 80 (2) of CPC?**
- 3. Whether the interim injunction can be granted against any person without claiming any relief in the suit?**
- 4. Whether the order passed by the Tribunal, without recording reasons to dispense with the prior notice under Rule 3 of Order XXXIX CPC and without recording reasons for grant of such relief, dispensing with the notice, be sustained?**

IN Re.POINT No.1:

Initially, the plaintiffs, who are the respondents 1 to 3 herein, filed suit against the defendants 1 to 8, who are the petitioners and respondents 4 to 6 herein, defendant No.9, who is the respondent No.7 herein, was impleaded by order dated 08.08.2012 in I.A. No.688 of 2012 and defendant No.10, who is respondent No.7 herein, was impleaded by order dated 15.05.2013 in I.A. No.1038 of 2012. The Sub-Registrar-I, Srikakulam, was not impleaded as a party to the suit by the date of passing interim order against the said Sub-Registrar-I, but filed an interlocutory application to implead the Sub-Registrar-I, Srikakulam, along with I.A. No.743 of 2012.

The petition filed under Order I Rule 10 (2) CPC was ordered on 17.06.2013 and impleaded the Sub-Registrar-I Srikakulam as defendant No.11 in the suit, whereas interim order was passed on 30.07.2012 restraining the proposed party from registering any document executed by any person transferring any part of the suit schedule property. The Tribunal, at second paragraph of page No.3 observed that the Sub-Registrar-I, Srikakulam, was not made as a party by the date of passing such order. However, based on the principle laid down by the Apex Court in **Shyamali Das v. Illa Chowdary and others**⁶, the Tribunal granted an interim injunction. Thus, it is evident from the record that the Sub-Registrar-I, Srikakulam, who was restrained by interim order under challenge from registering the documents transferring any part of schedule property, was not a party to the suit by the date of passing order under challenge. Even in **Shyamali Das v. Illa Chowdary and**

⁶ AIR 2007 SC 215

Others (6th supra), the Apex Court made it clear that the injunction cannot be granted against the person who is not a party to the proceedings, but the Tribunal observed that in the utmost necessity the court can grant an interim order even before impleading the person against whom the interim order is sought for. It is not the law declared by the Apex court, but it is an observation made by the Tribunal. Even otherwise, it is for the court to record reasons that there is an utmost necessity to grant an interim injunction, before impleading a person against whom the interim order was sought for. But here the order is bereft of any reasons to conclude that there is utmost necessity. Even the order is silent that in view of utmost necessity the interim order is granted, the Tribunal is not expected to pass such an order based on stray observation in the judgment of the Apex Court without recording reasons that there is an eminent or utmost necessity to grant an interim order restraining the Sub-Registrar-I from registering the document during pendency of the suit.

In the absence of such reasons and conclusion arrived by the Tribunal that there is utmost necessity to pass an interim order, such an interim order is contrary to the principle laid down in **Shyamali Das v. Illa Chowdary and others** (6th supra). On this ground, the order under challenge is liable to be set aside.

By the date of passing the order under challenge, the suit is pending and the interim order allegedly obtained against the respondents 2 to 8 before Tribunal, restraining them from interfering with the peaceful possession and enjoyment of the property in I.A. No.1 of 2012 and later filed I.A. No.82 of 2012 for police aid which

was allowed directing the police to provide necessary aid for implementation of the orders of the Tribunal in I.A. No.1 of 2012. In such case, even if any document is registered by Sub-Registrar-I, Srikakulam, pertaining to transfer of schedule property, such transaction is hit by Section 52 of the Transfer of Property Act and enforceability of those transactions depend upon the result of the suit. Therefore, there is absolutely no eminent or utmost necessity to grant an interim order against the Sub-Registrar-I, who is not a party to the suit by then and a petition under Rule 10(2) of Order I of CPC is pending by the date of passing order under challenge and consequently the order passed by the Tribunal is apparently erroneous.

Learned counsel for the petitioners raised a specific contention that no interim order can be granted against the person, who is not a party to the suit, placed reliance on the judgment of Madras High Court in **P.M. Aboobucker v. K.Kunhamoo and Others** (3rd supra), wherein the Madras High Court held as follows:

".....However, if I may say so with respect, I find myself in complete agreement with the principle that underlies the second sentence in the passage I have extracted above, that an interim relief granted during the pendency of a suit should not be of greater scope than what could be granted in the suit itself, after the party has established his right in the suit to that relief. In my opinion, that would be a very relevant factor to be taken into account in deciding whether a Court should or even could grant such an interim relief, especially so when the person against whom the interim injunction is sought is not a party to the suit, and against whom no relief could be granted in the suit itself."

The law declared by the Madras High Court is that the court shall not grant an interim order against the person who is not a party to the suit or proceedings.

Relying on the judgment of the Madras High Court in **P.M. Aboobucker v. K.Kunhamoo and Others** (3rd supra) and on the judgment of this court in **Mokkapati Harihara Prasad v. Nalakuditi Nageswara Rao and Anr.**,⁷ this court concluded that injunction cannot be granted against the person who is not a party to the suit. Even otherwise in the judgment of the Apex Court on which the Tribunal relied on, **Shyamali Das V. Illa Chowdary and others** (6th supra), it is made clear at paragraph 26 and held that a disputant is entitled to an interim order, provided he is a party thereto. If for one reason or the other, he cannot be impleaded as a party to the proceeding, the Court would have no jurisdiction to pass any interim order in his favour.

Thus, the person who is a party to the suit alone is entitled to claim injunction or similarly injunction can be granted against the party to the suit, but not against the third party who is not on record.

In **Bengal Ambuja Housing Development Ltd. and Ors. V. Pramila Sanfui and Ors.**⁸ the Apex Court held that It is a well settled principle of law that either temporary or permanent injunction can be granted only against the parties to a suit. Further the purported consent order in terms of Order XXXIX of the Code of Civil Procedure is only binding as against the parties to the suit.

In **Marwari Sabha Pilakhwa Vs. Sri Kanhaya Lal and Ors.**⁹, the same principle was laid down holding that injunction cannot be granted against the person, who is not a party to the suit. The law declared by the Apex Court and High Courts is in support of the

⁷ 1993(3) ALT 76

⁸ (2016)1 SCC 743

⁹ AIR 1973 ALL 298

petitioners herein that an application against the person, who is not a party to the suit under Rules 1 and 2 of Order 39 of CPC is not maintainable.

Rules 1 and 2 of Order XXXIX CPC itself are clear, and it is extracted hereunder for better appreciation:

"1. Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated "by any party to the suit", or wrongfully sold in execution of a decree, or

(b) that "the defendant" threatens, or intends, to remove or dispose of his property with a view to defrauding] his creditors,

(c) that "the defendant" threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach.-

(1) In any suit for restraining "the defendant" from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury

complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The court may by Order grant such injunction, on such terms, as to the duration of the injunction, keeping an account, giving security, or otherwise, as the court thinks fit.

On close analysis of Rules 1 and 2 of Order XXXIX of CPC, it is clear that interim order can be granted only when defendant threatens to damage, alienate, sale, remove or dispossess the plaintiff from the property, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit. An injunction can be granted when the property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree. So the language used in the provision is clear that when the property is likely to be alienated or attempted to be alienated by any party to the suit, an interim injunction can be granted.

In the present case, the Sub-Registrar-I, Srikakulam, was not a party to the suit, but the respondents filed an application under Rules 1 and 2 of Order XXXIX of CPC, later on filed an application under Rule 10(2) of Order I of CPC, to implead the sub-Registrar-I, Srikakulam, as a party to suit, the said petition was ordered on 17.06.2013, whereas the interim injunction was granted on 30.07.2012, almost one year prior to the Sub-Registrar-I came on record as a party to the suit. In those circumstances, the order passed by the Tribunal cannot be sustained and liable to be set aside on this ground.

The Tribunal, relying on the judgment of the Apex Court in Shyamali Das v. Illa Chowdary and othes (6th supra), granted an interim injunction against the Sub-Registrar-I, who was not a party to the suit, without recording any reason in arriving at such conclusion that there is an eminent or extreme necessity. Hence, the order passed by the Tribunal is liable to be set aside on this ground.

Accordingly point No.1 is answered in favour of the petitioners and against the respondents.

IN Re. POINT No.2:

The second ground raised by the counsel for the petitioners before this court is that the court cannot grant relief more than the relief claimed in the suit, under Rules 1 and 2 of Order XXXIX of CPC. The plaintiffs sought for the following relief:

"a) pass a decree granting perpetual injunction in favour of the plaintiffs and against the defendants restraining the defendants their men, agents, servants, attorneys, assigns and all persons claiming through them from interfering in any manner whatsoever with the peaceful possession adn enjoyment of plaintiffs in respect of suit schedule 'A to E' lands"

Thus the defendants to the suit alone were sought to be restrained, but not any other person by the date of passing order under challenge. Defendants 9 and 10 were also not parties to the suit, later they were impleaded by order dated 08.08.2012 in I.A. No.688 of 2012 and the order dated 15.05.2013 in I.A. No.1038 of 2012 respectively, whereas the Sub-Registrar-I was impleaded one year after passing the order under challenge. Thus the relief claimed in the plaint is limited to the defendants in the suit i.e. defendants 1

to 8, but not against defendants 9 and 10 or the proposed party, the Sub-Registrar-I, Srikakulam. In such case the court cannot grant interim order under Rule 1 of Order XXXIX of CPC, beyond the relief claimed in the plaint. A similar case came up before this court in **Sree Jain Swetambar Terapanthi VID (s) v. Phundan Singh and others** (5th supra) wherein this court considered grant of an interim order beyond the scope of the suit and at paragraph 19, held as follows:

"...no relief should be granted in interlocutory proceedings beyond the scope of the suit. It may be noted that the present suit out of which the appeal has arisen was filed by the appellant-society for declaration and injunction, the suits filed by the contesting Respondents 2, 4 to 6, challenging their expulsion from the society, were dismissed except the suit of Respondent No. 4, which is pending. No material is placed before us to show that any relief is granted to him in that suit...."

A similar view is expressed by this Court in **Kolli Butchi Koteswara Rao v. District Level Committee and others** (4th supra). Hence, it can safely be concluded that granting interim relief beyond the scope of the suit or beyond the relief claimed in the suit by way of an interim order is unsustainable and it is an illegality.

Accordingly point No.2 is held against the respondents and in favour of the petitioners.

IN Re. POINT No.3:

The major contention raised by the counsel for the petitioners is that Sub-Registrar-I, Srikakulam District, i.e. proposed party is a Government Servant, claiming relief to restrain him to register any document pertaining to the suit schedule property while discharging

his official duties, a notice under Section 80 of CPC is mandatory. But here no notice as mandated under Section 80 of CPC was issued to the proposed respondent i.e. Sub-Registrar-I, Srikakulam. In the absence of such notice, the court cannot entertain the suit against the Government or its officials.

No doubt, the suit itself cannot be entertained, if mandatory notice under Section 80 CPC was not issued. But here the suit was filed initially against the other defendants, later filed an application in I.A. No.731 of 2012 under Rule 10(2) of Order I of CPC to implead the Sub-Registrar-I, Srikakulam, and also filed an application in I.A. No.743 of 2012, but he was impleaded by order dated 17.06.2013 as 11th defendant in the main suit i.e. almost one year after the interim injunction is granted. In such case the Sub-Registrar-I without mandatory notice as required under Section 80 of CPC cannot be impleaded. However, respondents filed I.A. No.731 of 2012 only to implead Sub-Registrar-I, Srikakulam, but it was kept pending.

I.A. No.732 of 2012 was filed on 25.07.2012 to dispense with notice under Section 80 of CPC to the Sub-Registrar-I under Section 80(2) CPC. The said petition was allowed. Therefore, entertainment of the suit against the Sub-Registrar-I dispensing with the notice as required under Section 80 CPC cannot be found fault. Moreover, there is clear interdict to grant an interim order against the Government official or public officer without issuing show cause notice.

But here in utter disregard of the prior show cause notice mandated under section 80(2) of CPC, the Tribunal granted an interim injunction. Thus, the order passed by the Tribunal which is under challenge is in clear violation of mandatory requirement under

section 80(2) of CPC and therefore, the order is liable to be set aside on this ground also.

Learned counsel for the petitioners in support of his contention drawn the attention of this court to the judgment of the Apex Court in **State of A.P. and Others v. Pioneer Builders, A.P.** (1st supra), wherein it is made clear that though no procedure is specified as to how the leave is to be sought for or given yet the order granting leave must indicate the ground(s) pleaded and application of mind thereon. A restriction on the exercise of power by the Court has been imposed, namely, the Court cannot grant relief, whether interim or otherwise, except after giving the Government or a public officer a reasonable opportunity of showing cause in respect of relief prayed for in the suit. No such notice was issued when such procedure is not complied by the parties, the order passed by the court is liable to be set aside. Since legislative intent noticed above, it needs little emphasis that the power conferred in the Court under sub-section (2) is to avoid genuine hardship and is, therefore, coupled with a duty to grant leave to institute a suit without complying with the requirements of sub-section (1) thereof, bearing in mind only the urgency of the relief prayed for and not the merits of the case. More so when want of notice under sub-section (1) is also made good by providing that even in urgent matters relief under this provision shall not be granted without giving a reasonable opportunity to the Government or a public officer to show cause in respect of the relief prayed for. The provision also mandates that if the Court is of the opinion that no urgent or immediate relief deserves to be granted it should return the

plaint for presentation after complying with the requirements contemplated in sub-section (1).

A similar view is expressed by the Madras High court in **M.Subramaniam and Ors., v. Executive Officer, Chinnavedampatti Town Panchayat, District Collector** (2nd supra), at paragraph 8, it was held as follows:

".... the learned counsel for the appellants would contend that both the trial Court as well as the first appellate Court have erroneously held that the suit is not maintainable for want of notice under Section 80 of CPC whereas along with the plaint, he has filed I.A.No.1425 of 1990 and after getting permission from the Court, the plaint was numbered. Under Section 80(2) of CPC only to get an order for an urgent or immediate relief against the Government or against any public officer, a suit can be instituted with the leave of the Court without serving any notice as required under Section 80(1) of CPC. But no interim relief can be granted without notice to the Government or public officer as the case may be . So taking shelter under Section 80 (2) of CPC, the learned counsel appearing for the appellants would contend that already Court has permitted him to file the suit without notice under Section 80 CPC.

I am afraid that such an interpretation cannot be given to Section 80 of CPC. Under Section 80 of CPC, two months notice is necessary, for filing a suit against the Government or public officer. If the plaintiffs seek any urgent order from the Court then he can file the suit with an application for permission to file the same and even in that event, he will not be entitled to get any interim order without notice. Under such circumstances, I do not find any illegality or infirmity in the findings of the Courts below that the suit is bad for notice under Section 80 of CPC."

Thus, the law declared by the Apex Court and Madras High Court made it abundantly clear that no interim order, without issuing show cause notice, be passed by the court against the Government or its officers when notice required under Section 80(1) of CPC is dispensed with exercising power under Section 80(2) of CPC and order passed in violation of Section 80(2) of CPC itself is an illegality.

In the present case, the Tribunal passed an interim order under Rules 1 and 2 of Order XXXIX of CPC dispensing with the notice mandated under Section 80(1) of CPC by exercising power under 80(2) of CPC. Thus the order under challenge is totally in contravention of Section 80(2) of CPC. Therefore applying the law declared by the Apex Court and persuaded by the law declared by the Madras High court, the order under challenge is liable to be set aside.

Accordingly, point No.3 is answered against the respondents and in favour of the petitioner.

IN Re. POINT No.4:

Learned counsel for the respondents 1 to 3 contended that this court cannot exercise jurisdiction under Article 227 of Constitution of India when the petitioners pursuing their remedies before the Tribunal, filing an application to vacate an interim order passed under Rules 1 and 2 of Order XXXIX of CPC as admitted in ground No.10 of the grounds of revision petition, he cannot pursue his remedies before this court by way of revision.

Undoubtedly, the petitioners filed an application under Rule 4 of Order XXXIX of CPC for vacating interim order passed by the Tribunal under Rules 1 and 2 of Order XXXIX of CPC, as admitted by

them. But it is alleged that the Tribunal adjourning the matter for one reason or the other at request of the respondents 1 to 3 herein. When an interim injunction was granted *ex parte*, it is the duty of the court to decide application within 30 days from the date of passing such an order. But, obviously, for the reasons best known, the Tribunal adjourning the matter from time to time for one reason or the other, mostly at request of the respondents 1 to 3 herein, who obtained an interim injunction.

In **A. Venkatasubbiah Naidu vs. S. Challappan and Ors.**¹⁰ the Apex Court held that Rules 1 and 2 of Order XXXIX of CPC does not say that the period of the injunction order should be restricted by the Court to thirty days at the first instance, but the Court should pass final order on it within thirty days from the day on which the injunction was granted.

The Tribunal did not dispose of the application filed under Rules 1 and 2 of Order XXXIX of CPC despite the direction issued by the Apex court, when an *ad interim* injunction was granted. In such case, this court can exercise its jurisdiction under Article 227 of the Constitution of India, since it is supervisory in nature to keep the subordinate courts and Tribunals under the control of the High Courts within the bounds of its jurisdiction when there is clear inaction on the part of the Tribunal and adjourning the petition for one reason or the other, mostly at request of the respondents 1 to 3 herein, who obtained an interim order against Sub-Registrar – 1, Srikakulam, this court can exercise jurisdiction under Article 227 of the Constitution of India and the parties cannot be relegated to

¹⁰ 2000(5) ALT 44 (SC)

pursue their remedies before the Tribunal where vacate petition is pending.

This court, time and again laid down certain guidelines as to when jurisdiction under Article 227 of the constitution of India can be exercised. The power of superintendence conferred upon the High Court by Article 227 of Constitution is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised suo motu. It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in **State (N.C.T. Of Delhi) v. Navjot Sandhu@ Afsan Guru**¹¹ that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the law declared by the Apex Court, this court can exercise jurisdiction under Article 227 of the constitution of India when the trial court exhibited its sheer negligence in deciding the application though granted an *ex parte* injunction, in utter violation of the direction issued by the Apex Court in the judgment referred supra.

The order under challenge is laconic for the reason that the order is silent as to why notice under Rule 3 of Order XXXIX of CPC is dispensed with before granting an *ad interim* injunction. According

¹¹ (34)2005 (3) ALT (Cri.) 125 (SC)

to Rule 3 of Order XXXIX of CPC, the court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an *ad interim* injunction, direct notice of the application for the same to be given to the opposite party. Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant – a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with, - i) a copy of the affidavit filed in support of the application; ii) a copy of the plaint; and iii) copies of documents on which the applicant relies, and b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent. Therefore, the Proviso to Rule 3 of Order XXXIX of CPC is clear that the duty is cast upon the court to record reasons for its opinion that the object of granting interim injunction would be defeated by delay, but the order is bereft of any such reason. In such case the order passed by the Tribunal is liable to be set aside. Moreover the court must be cautious in passing such an order, since such an order would result in serious consequences in certain occasions. In the present case, an *ex parte* interim order is passed against Government or public officer, who is not a party to the suit by then, without recording reasons as required under Rule 3 of Order XXXIX of CPC, without issuing show cause notice as required under Section 80(2) CPC and beyond relief claimed

in the suit. Therefore, the order under challenge in I.A.743 of 2012 is clearly vitiated by illegalities and therefore liable to be set aside.

In view of my foregoing discussion, I find that the Tribunal committed grave illegality in passing the order under challenge and the same cannot be sustained.

In the result, the civil revision petition is allowed setting aside the order dated 30.07.2012 in I.A. No.743 of 2012 in O.S. No.1 of 2012 passed by the Andhra Pradesh State Wakf Tribunal, Hyderabad.

Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

Date:19.06.2017
BV

Note: LR copy to be marked.

Yes/No.

M.SATYANARAYANA MURTHY, J

